

PENINSULA TOWNSHIP

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

PENINSULA TOWNSHIP ZONING BOARD OF APPEALS AGENDA

July 16, 2024

7:00 p.m.

1. **Call to Order**

2. **Pledge**

3. **Roll Call**

4. **Approval of Agenda**

5. **Conflict of Interest**

6. **Brief Citizen Comments – (for items not on the Agenda)**

7. **Business:**

1. **Variance No. 918, Zoning = R-1B – Coastal Zone**

Applicant: Wayne Magee, 653 East Saginaw Highway, East Lansing, MI 48823

Owner: James Nye, 10191 Peninsula Drive, Traverse City, MI 49686

Property Address: 10191 Peninsula Drive, Traverse City, MI 49686

1. Requesting a variance from Section 6.8 of the Zoning Ordinance to reconstruct a second story of an existing non-conforming single-family residence with attached garage 13.3 feet from the side property line, where 15 feet is required.
2. Requesting a variance from Section 7.4.7(A)(1) & (2) to construct a second and third story addition to an existing non-conforming single-family residence with attached garage 12 feet from the edge of a delineated wetland, where 25 feet is required.

Parcel Code # 28-11-007-016-30

8. **Approval of Minutes from the June 18, 2024, Meeting**

9. **Citizen Comments**

10. **Board Comments**

11. **Adjournment**

Variance Request #918

Peninsula Township Planning & Zoning Department

STAFF REPORT
ZBA Request # 918

Physical Address of Subject Property: 10191 Peninsula Drive, Traverse City, MI 49686

Date: July 16, 2024

To: Peninsula Township Zoning Board of Appeals

From: Jenn Cram, AICP, Director of Planning and Zoning

RE: Request # 918

Zoning District: R-1B Coastal Zone

Hearing Date: July 16, 2024 – 7:00 PM

Applicant: Wayne Magee, 653 East Saginaw Highway, East Lansing, MI 48823

Owner: James Nye, 10191 Peninsula Drive, Traverse City, MI 49686

Subject Property: 10191 Peninsula Drive, Traverse City, MI 49686

Tax ID: 28-11-007-016-30

Request:

1. Requesting a variance from Section 6.8 of the Zoning Ordinance to reconstruct a second story of an existing non-conforming single-family residence with attached garage 13.3 feet from the side property line, where 15 feet is required.
2. Requesting a variance from Section 7.4.7(A)(1) & (2) to construct a second and third story addition to an existing non-conforming single-family residence with attached garage 12 feet from the edge of a delineated wetland, where 25 feet is required.

Applicant

Statement: Please see the enclosed application submitted by the applicant on behalf of the property owner, **Exhibit 1**.

Background Information:

- The subject property is zoned R-1B – Coastal Zone – Single and Two Family Residential; the properties to the north and south are also zoned R-1B. The property to the east is zoned R-1A and the West Grand Traverse Bay is located to the west.
- The subject property is 1.06 acres or 46,173 square feet.
- The minimum lot size for the R-1B zone district is 25,000 square feet.
- The Peninsula Township Zoning Ordinance was adopted in 1972.
- The subject property currently includes an existing two-story residence with an attached garage, covered front porch and above ground decks.
- The existing residence includes three bedrooms and two and one half bathrooms.
- The existing residence and attached garage were constructed in 2002.

- There is a delineated wetland on the property.
- Zoning Ordinance Amendment No. 195 was adopted on May 22, 2018. Amendment No. 195 includes regulations for wetlands and required setbacks from delineated wetlands.
- There is also an existing shed on the property that is located within the delineated wetland that is the subject of a zoning ordinance violation. The shed is proposed to be relocated outside of the wetland boundary meeting all required setbacks.

Section 3.2 Definitions:

Practical Difficulty: To obtain a dimensional variance, the applicant must show practical difficulty by demonstrating all of the following:

- (a) *Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;*
- (b) *A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;*
- (c) *The plight of the owner is due to unique circumstances of the property; and;*
- (d) *The problem was not self-created. (ADDED BY AMENDMENT 171A)*

Section 6.8 Schedule of Regulations: (Revised by Amendment 91), (Amendment 107D)

The Regulations contained herein shall govern the Height, Bulk, and Density of Structures and Land Area by Zoning District:

*R-1B, Suburban Residential: Front setback = 30 feet
 Side yard setbacks = 15 feet
 Rear yard setback = 30 feet
 Ordinary Highwater setback = 60 feet
 Allowable percentage of lot coverage = 15%*

Section 7.4.7 Floodplain and Wetland Controls: (Revised by Amendment 195)

(A) Wetland.

Definition of Wetland: Land characterized by the presence of water at frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh. A wetland may or may not be contiguous to the Great Lakes, an inland lake or pond, or a river or stream. This applies to public, commercial, and private lands regardless of zoning or ownership. Wetlands are regulated per Part 303 of the Natural Resources and Environmental Act, 1994 PA 451, as amended.

Development: There shall be no development or modification of any kind within a wetland area without first having been issued a wetland permit by the Michigan Department of

Environmental Quality (MDEQ) and/or an Earth Change and Storm Water Permit from Peninsula Township. Any such approved development shall be subject to the following:

- (1) *A setback of 25 feet shall be maintained between any structure or impervious (including but not limited to parking lot, driveway, paths, etc.) surface and wetland.*
- (2) *Except as specified in subsection (3), there shall be no development or modification of any kind within a wetland or wetland setback. Wetlands may be used for density calculations and incorporated in Storm Water Management Plans.*
- (3) *Boardwalks 3 feet or less in width shall be permitted following issuance of a Land Use Permit and subject to MDEQ approval, upon finding there will be no adverse impact on ground or surface waters of the wetland. The Zoning Administrator or Planning Commission, as applicable, may require the applicant to obtain a formal determination of the wetland boundary by the MDEQ.*
- (4) *Wetland Identification: In the event of reasonable doubt as to the presence of a wetland, the Zoning Administrator may require the applicant to submit detailed engineering studies prepared by a State of Michigan certified wetland delineator showing the existence, extent, and location of wetland areas. The Zoning Administrator shall use such information provided in making a final determination of the presence of a wetland.*
- (5) *Compliance with Part 303, Wetlands Protection of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.*

TABLE OUTLINES VARIANCE REQUESTS

Section 6.8 R-1B Standards	Required	Variance	Conforms to Standards?
Minimum Front Setback	30'	No	Yes
Minimum North side yard setback	15'	No	No – Variance Requested
Minimum South side yard setback	15'	No	Yes
Minimum Rear setback	30'	No	Yes
Minimum OHWM	60'	No	Yes
Percentage of Lot Coverage:	15% max.	No	Yes
Section 7.4.7 (A) (1) & (2)	25'	No	No - Variance Requested

Staff Comments:

The purpose of the side setback is to provide for safety (emergency access) and separation of structures (privacy).

The purpose of wetland setbacks is to protect natural resources and water quality.

Section 5.7.3 Variances: *The Board of Appeals shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the basic conditions listed herein can be satisfied:*

1. Basic Conditions:

- (a) *That the need for the variance is due to unique circumstances or physical conditions, such as narrowness, shallowness, shape, water or topography, of the property involved and that the practical difficulty is not due to the applicant's personal or economic hardship.*

Staff Comment: The single family residence was constructed in 2002. Wetland setbacks were established in 2018. There is a delineated wetland on the property.

- (b) *That the need for the variance is not the result of actions of the property (self-created) or previous property owners.*

Staff Comment: The single family residence was constructed in 2002. The wetland likely existed on the property when the original single-family residence was constructed in 2002. Wetland setbacks were established in 2018.

- (c) *That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)*

Staff Comment: In addition to the setback requirements noted in Section 6.8 for front, side, rear and OHWM there is also a 25-setback required from a delineated wetland per Section 7.4.7(B) (1).

- (d) *That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give a substantial relief to the owner of the property involved and be more consistent with justice to other property owners.*

Staff Comment: Requested variances will allow the property owner to increase living space including two additional bedrooms and one additional bathroom by constructing a second and third story addition to the existing residence on the property.

- (e) That the variance will not cause adverse impacts on surrounding property, property values or the use and enjoyment of property in the neighborhood.

Staff Comment: The requested variances will not likely cause adverse impacts on surrounding property, property values or the use and enjoyment of property in the neighborhood as the area has been developed with single-family residences. In addition, the existing residence has been 13.3 feet from the north side property line and 12 feet from the delineated wetland since 2002.

- (f) That the variance shall not permit the establishment within a district of any use which is not permitted by right, or any use of r which a conditional use or temporary use permit is required.

Staff Comment: The R-1B zone district allows for single and two-family dwellings as uses by right along with associated accessory structures. The proposed structure will be used as a dwelling with attached garage consistent with allowed uses.

2. *Rules: The following rules shall be applied in the granting of variances:*

- (a) *The Board of Appeals may specify, in writing, such conditions regarding the character, location, and other features that will in its judgement, secure the objectives and purposes of this Ordinance. The breach of any such condition shall automatically invalidate the permit granted.*
- (b) *Each variance granted under the provisions of this Ordinance shall become null and void unless: the construction authorized by such variance or permit has been commenced within six (6) months after the granting of the variance; and the occupancy of the land, premises, or buildings authorized by the variance has taken place within one (1) year after the granting of the variance.*
- (c) *No application for a variance which has been denied wholly or in part by the Board of Appeals shall be resubmitted for a period of (1) year from the date of the last denial, except on grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board of Appeals to be valid.*

**Peninsula Township
Zoning Board of Appeals**

ZBA Case No. 918

Date of Meeting: July 16, 2024

Peninsula Township
13235 Center Road
Traverse City, MI 49686

Applicant: Wayne Magee, 653 East Saginaw Highway, East Lansing, MI 48823

Owner: James Nye, 10191 Peninsula Drive, Traverse City, MI 49686

Parcel Code: #28-11-007-016-30

Request:

1. Requesting a variance from Section 6.8 of the Zoning Ordinance to reconstruct a second story of an existing non-conforming single-family residence with attached garage 13.3 feet from the side property line, where 15 feet is required.

Action by the Zoning Board of Appeals:

_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(Chair)		
_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(Vice Chair)		
_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(Member)		
_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(Member)		
_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(Member)		

Board Action:

**Peninsula Township
Zoning Board of Appeals**

ZBA Case No. 918

Date of Meeting: July 16, 2024

Peninsula Township
13235 Center Road
Traverse City, MI 49686

Applicant: Wayne Magee, 653 East Saginaw Highway, East Lansing, MI 48823

Owner: James Nye, 10191 Peninsula Drive, Traverse City, MI 49686

Parcel Code: #28-11-007-016-30

Request:

2. Requesting a variance from Section 7.4.7(A)(1) & (2) to construct a second and third story addition to an existing non-conforming single-family residence with attached garage 12 feet from the edge of a delineated wetland, where 25 feet is required.

Action by the Zoning Board of Appeals:

_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(Chair)		
_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(Vice Chair)		
_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(Member)		
_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(Member)		
_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(Member)		

Board Action:

Exhibit 1

Peninsula Township Variance Application

General Information

A fully completed application form, fee, and all related documents must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the Zoning Board of Appeals meeting. **12 copies are required.**

Applicant Information

Applicant: Name Wayne Magee
Address Line 1 653 East Saginaw East Lansing, MI 48823
Address Line 2 _____
Phone OFFICE ; 517-708-8652 Cell 517-930-0352
E-mail magee@masterworkllc.com

Owner: Name James Nye
Address Line 1 10191 Peninsula Dr.
Address Line 2 _____
Phone _____ Cell 269-598-4248
E-mail james@nyeadvisors.com

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Parcel ID 28-11-007-016-30 Zoning R1B
Address Line 1 10191 Peninsula Dr. Traverse City
Address Line 2 _____

Type of Request

Indicate which Ordinance requirement(s) are the subject of the variance request:

- Front Yard Setback Side Yard Setback Rear Yard Setback
 Width to Depth Ratio Lot Coverage Off-Street Parking
 Signage Height/Width Non-Conformity Expansion
 Other: Please Describe: Present home encroaches upon wet land set back at rear of structure

Attachments

- \$1,200.00 application fee
 Basic Conditions Worksheet
 Site plan drawn to scale showing the following:
 a. Property boundaries; Shoreline properties must show the Ordinary High Water Mark on a certified survey, and the Flood Elevation Line (3 feet above OHWM) if any;
 b. All existing and proposed structures including decks and roof overhangs;
 c. Setbacks for existing and proposed structures (varies by zoning district).
 Front elevation diagram drawn to scale.

Peninsula Township Variance Application

Basic Conditions Worksheet

In order for a variance to be justified, the Applicant must meet **all of the Basic Conditions**, as defined in Section 5.7.3(1) of the Peninsula Township Zoning Ordinance. The Applicant must answer the following questions pertaining to the Basic Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(1) Basic Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided all of the Basic Conditions listed herein can be satisfied.**

(1) **BASIC CONDITIONS:** The applicant must meet ALL of the following Basic Conditions. That any variance from this Ordinance:

- a) **That the need for the variance is due to unique circumstances or physical conditions, such as narrowness, shallowness, shape, water or topography, of the property involved and that the practical difficulty is not due to the applicant's personal or economic hardship.**

Is this condition met? Please explain: Yes

The residence at 10191 Peninsula Dr. was built before the current set back ordinances were adopted thereby rendering the home non-conforming

- b) **The need for the variance is not the result of actions of the property owner (self-created) or previous property owners.**

Is this condition met? Please explain: Yes

See above

Mr. Nye has not altered the shape or location of his home in anyway since purchase
Previous owners pre-date current ordinance restrictions.

- c) **That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)**

Is this condition met? Please explain: Yes

The only ordinance in play is current set back limits. Given that this in turn places the home in the non-conforming category, it unreasonably restricts the owner from expanding his home to answer growing needs of the owner.

The expansion is well within the permitted purpose allowed by its current zoning.

Were the non-conforming restrictions not in play the expansion of second floor over an existing garage and placing a third story over this same garage area would be allowed contingent upon compliance with all other codes and ordinances.

d) That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

Is this condition met? Please explain: Yes

It is our belief that when the 25' wetland set back was established the resultant creation of non-conforming structures and the perjorative nature of "enhanced safety" should have been addressed at that time.

e) That the variance will not cause adverse impacts on surrounding property, property values or the use and enjoyment of property in the neighborhood.

Is this condition met? Please explain: Correct

1. Allowing a vertical addition to the Nye residence within the 25' wetland setback should have no negative impact on neighbors
2. Wetland in question is deeply wooded area rising in topography
3. Due to location of home in relation to its neighbors and the fact that it backs up to the deeply wooded rest of parcel, a 2nd story expansion and 3rd story addition will not obstruct views
4. Given the fact that the addition does not further encroach on the wetland set back, it does not impact the wetland
5. Mr. Nyes proposed addition is in keeping with the protected values established by the community and will further enhance the the aesthetic established in the surrounding area.

f) That the variance shall not permit the establishment within a district of any use which is not permitted by right, or any use for which a conditional use or temporary use permit is required.

Is this condition met? Please explain: Yes

1. Proposed vertical addition will comply with all current ordinances for R1B
2. All exterior lighting ordinances will be adhered to
3. Exterior design, while more contemporary than present facade, will be in keeping with the standards of the area
4. Structure remains a single family home designed to be a single family residence

May 13, 2024

To Whom It May Concern:

Wayne Magee has my authorization to submit any relevant documents related to the zoning appeals process for 10191 Peninsula Drive Traverse City, MI.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Nye', with a long horizontal flourish extending to the right.

James Nye

10191 PENINSULA DR. – POSITION PAPER

05-20-2024

Members of the Board,

The historical facts are as follows.

The home in question was erected in 2002,

Section 7.5 addressing structural changes in non-conforming buildings was amended in 2007. This amendment placed as a condition that structural changes be burdened with a requirement of “enhanced safety” for the occupants.

The current lot, flood plain, and wetland set back requirements were established per amendment 195 in 2018.

Mr. Nye purchased the home in April of 2023. At that time, the existence of a wetland was not obvious. The rear of the property is deeply wooded with a gradual rising topography. There were none of the more common features of a wetland visible. The existence of this wetland came to light when Mr. Nye went to EGLE to secure permission to move a storage shed to the rear of the property. It was at that time that EGLE marked on his site plan the existence of a wetland. This initiated a wetland boundary determination and a follow up survey to establish setback. The survey revealed the wetland setback encroachment.

Our position is that the board of 2018, upon passing amendment 195 created a situation where existing housing would now automatically fall under the more restrictive conditions of section 7.5 created in 2007.

We feel that granting Nye a variance to allow a vertical expansion of his home does not further encroach on current setbacks, will comply with all current building code and township ordinances, and will not jeopardize local home values.

Moreover, Mr. Nye has shown a sensitivity to the situation. The home expansion proposal has been redrawn. The sixteen ft by twenty-four ft expansion on the South end of the home has been removed thereby eliminating any additional encroachment. This affects all three floors and reduces the overall addition by 1100ft. The amended design incorporates a stair well bounded by five-eighths drywall and fire rated doors along with a steel stair system. This creates an escape zone for all three floors.

In short granting Mr. Nye this variance will address an unintended consequence created with amendments passed in 2007 and 2018 and will afford him “substantial justice”.

Signed,



Wayne Magee

NATURE OF VARIANCE REQUEST

North/West corner of home infringes on setback by twenty inches.

North/East corner of home infringes on rear wetland setback by four feet, four inches.

South/East corner of home infringes on rear wetland setback by thirteen feet.

NATURE OF ALTERATIONS

Remove the front porch to the NW corner of the home.

Leave existing deck on NE corner of the home that is encroaching on fifteen-foot side setback.

Extend the second floor over the existing garage on South of home to create an entertainment room.

Build a third floor over the second floor over the existing garage to add bedrooms and a bath.

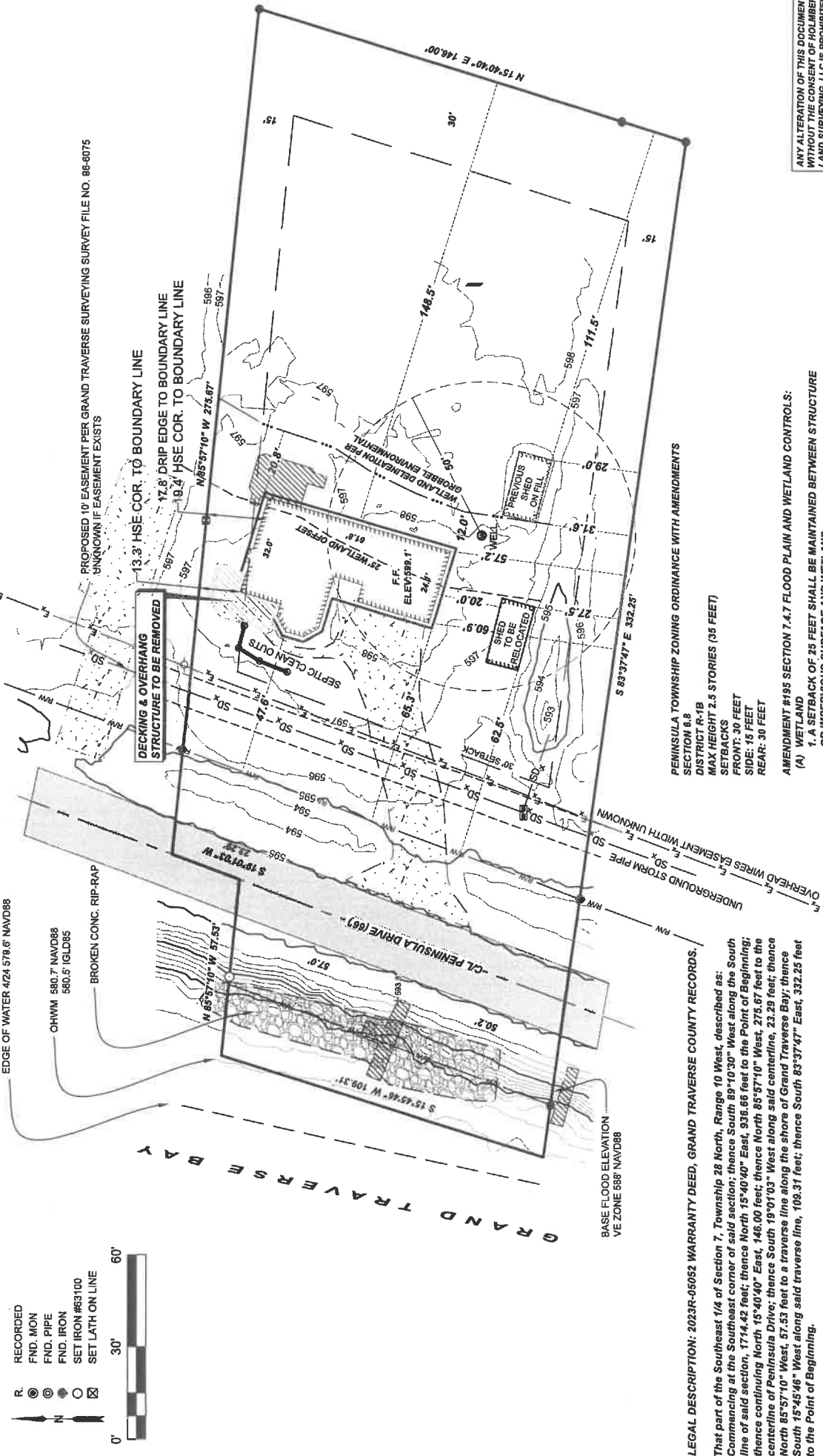
Move stairs to second floor from current location to the current entry way.

Use the same entry area to extend stairs to the third floor.

There will be no work in the Northern end of home that will encroach any further into the setback.

None of the proposed 2nd and 3rd floor additions will further encroach the wetland setback in rear of home.

- R. RECORDED
- FND. MON.
- FND. PIPE
- FND. IRON
- SET IRON #63100
- SET LATH ON LINE



ANY ALTERATION OF THIS DOCUMENT WITHOUT THE CONSENT OF HOLMBERG LAND SURVEYING, LLC IS PROHIBITED.

HOLMBERG
LAND SURVEYING, LLC
310 W. Front St. Suite 208, Traverse City, MI 49684
231-357-4785

Site Plan_R1

PENINSULA TOWNSHIP ZONING ORDINANCE WITH AMENDMENTS

- SECTION 6.8
- DISTRICT R-1B
- MAX HEIGHT 2.5 STORIES (35 FEET)
- SETBACKS
- FRONT: 30 FEET
- SIDE: 15 FEET
- REAR: 30 FEET
- AMENDMENT #195 SECTION 7.4.7 FLOOD PLAIN AND WETLAND CONTROLS:
 - 1. A. SETBACK OF 25 FEET SHALL BE MAINTAINED BETWEEN STRUCTURE OR IMPERVIOUS SURFACE AND WETLAND.

Prepared For:
James Nye

DRAWN BY:
DLH
SCALE
30'
JOB NUMBER:
023-24
DATE:
5/14/24
SHEET #

1
OF 1

LEGAL DESCRIPTION: 2023R-05062 WARRANTY DEED, GRAND TRAVERSE COUNTY RECORDS.
That part of the Southeast 1/4 of Section 7, Township 28 North, Range 10 West, described as:
Commencing at the Southeast corner of said section; thence South 89°10'30" West along the South line of said section, 1714.42 feet; thence North 15°40'40" East, 936.66 feet to the Point of Beginning; thence continuing North 15°40'40" East, 146.00 feet; thence North 86°57'10" West, 275.67 feet to the centerline of Peninsula Drive; thence South 19°01'03" West along said centerline, 23.29 feet; thence North 85°57'10" West, 57.53 feet to a traverse line along the shore of Grand Traverse Bay; thence South 15°45'46" West along said traverse line, 109.31 feet; thence South 83°37'47" East, 332.25 feet to the Point of Beginning.

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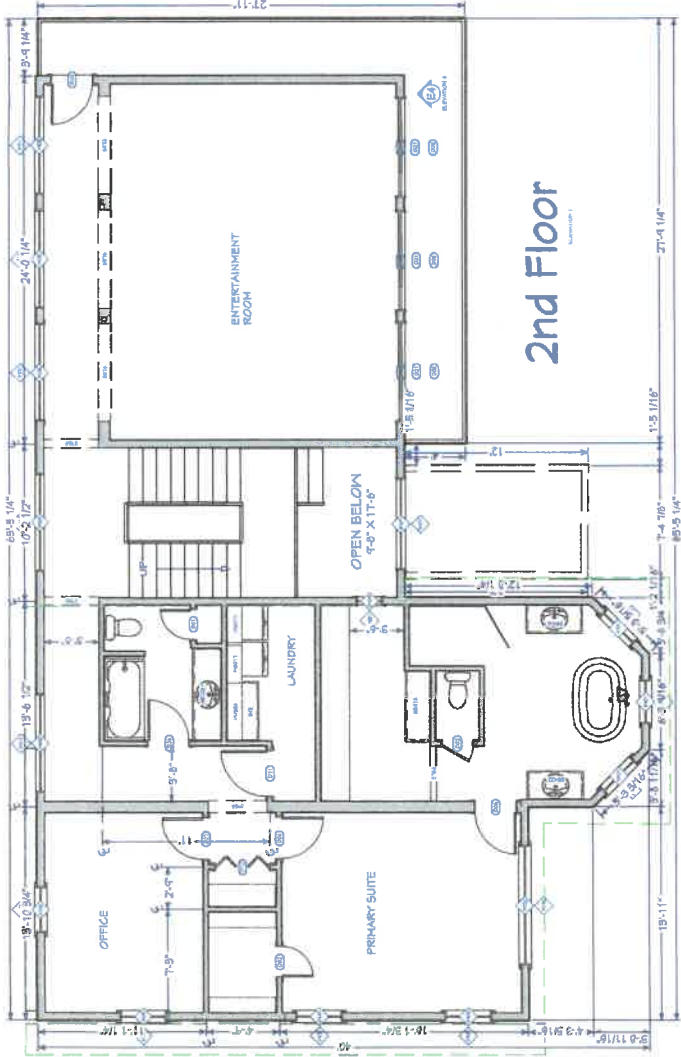


PROJECT
10191
PENINSULA

2nd & 3rd FLOOR
ADDITIONS
ESCAPE WELL

ZDA
PRESENTATION

2
PAGE



1/8th scale



PROJECT
10191
PENINSULA

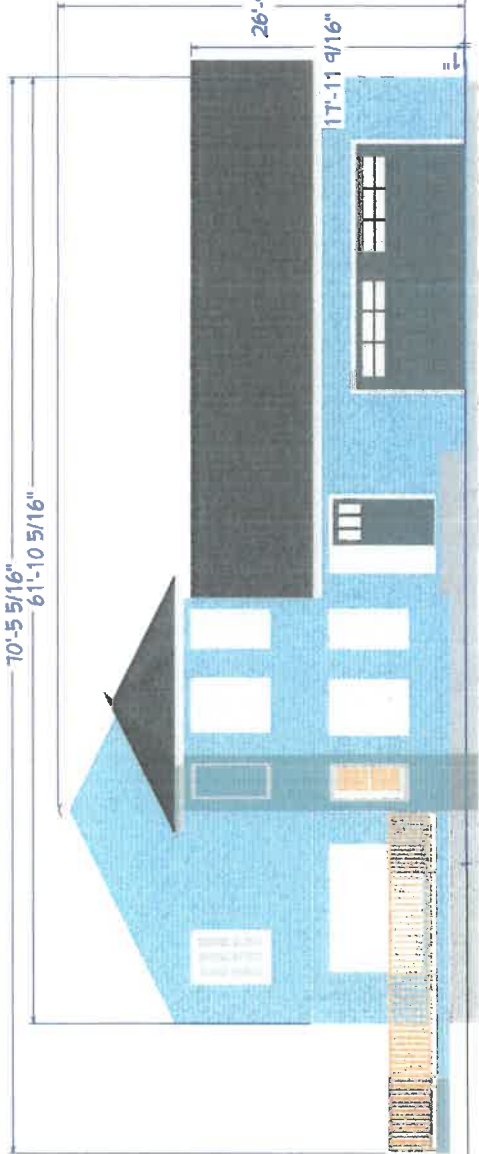
ELEVATIONS
WEST SIDE

ZBA
PRESENTATION

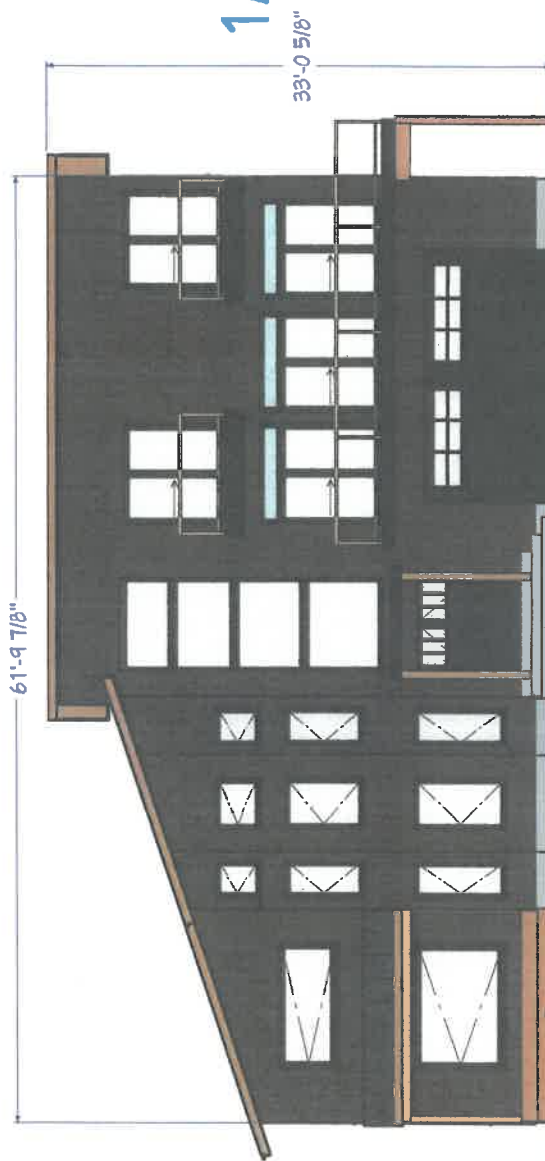
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PAGE

Elevation -
CURRENT HOME
1/8th scale



Elevation -
ADDITION
1/8th scale



Minutes

PENINSULA TOWNSHIP
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**PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS MINUTES**

June 18, 2024
7:00 p.m.

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call** Cowan, Dloski, Dolton, Wahl, Dunn, Cram-Director of Planning and Zoning
4. **Approval of Agenda** Cowan moved to approve the agenda with a second by Dloski. **Approved by consensus.** Cram had a correction to the agenda. Under Business, Item 1, the request for an extension was actually an approval of 4 variance requests and the fourth variance is not listed on the agenda, but all of the information in the packet is correct. This was not re-published as this is not a public hearing; this is an extension request. The agenda amendment is to include the fourth variance request for No. 911. **Dunn moved to approve the agenda as amended with a second by Wahl. Approved by Consensus**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – (for items not on the Agenda)** None
7. **Business:**
 1. **Extension Request for Variance No. 911, Zoning = R-1B – Coastal Zone (Originally Approved December 19, 2023)**
Applicant/Owner: Matthew B Myers & Keegan L Myers, 625 & 701 Tucker Point, Traverse City, MI 49686
Property Address: 707 Tucker Point, Traverse City, MI 49686
 1. Requesting to replace an existing two (2) story non-conforming structure per Section 7.5.6.
 2. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new garage and dwelling .5-feet from the front property line, where 30-feet is required.
 3. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new garage and dwelling, 12.6-feet from the rear property line, where 30-feet is required.
 4. Requesting a variance from Section 6.8 of the Zoning Ordinance to exceed the maximum lot coverage of 15% up to 18%.

Parcel Code # 28-11-565-925-55

Dolton asked Cram to go through the extension process.

Cram: Under Section 5.7.3 (3) (b) Each variance granted under the provisions shall become null and void unless the construction authorized by such variance or permit has commenced within 6

months of the granting of the variance and the occupancy of the land, premises, or buildings authorized by the variance has taken place within 1 year after granting the variance. The variance request No. 911 was approved by the ZBA on December 19, 2023. The 6 months would be June 19, 2024, tomorrow. The applicants reached out to me to ask questions about their upcoming land use permit. I notified the applicant their 6 month deadline was coming up quickly and they should be submitting a request for an extension prior to the expiration date. Our existing zoning ordinance does not talk about an extension process. So to be safe, I put it on an agenda for consideration by the ZBA to officially approve the request. They are not asking for any changes in what was approved. The 4 variances that were authorized by the ZBA on December 19, 2023 included:

1. Requesting to replace an existing two (2) story non-conforming structure per Section 7.5.6.
2. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new garage and dwelling .5-feet from the front property line, where 30-feet is required.
3. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new garage and dwelling, 12.6-feet from the rear property line, where 30-feet is required.
4. Requesting a variance from Section 6.8 of the Zoning Ordinance to exceed the maximum lot coverage of 15% up to 18%.

The applicant is finalizing their building plan, so they can come in and apply for a land use permit. They have asked for a 6 month extension.

Dloski: what section of the zoning ordinance allows us to grant extensions?

Cram: our zoning ordinance does not talk about granting an extension. People can come in and apply for things that fall under the special use permit and land use permit. There is a process to request these extensions. The zoning ordinance is silent with regard to a variance extension. I spoke with legal counsel and they approved this method for handling a variance request extension.

Dloski: a variance extension process needs to be included when we amend the zoning ordinance.

Dolton: has there been any discussion on granting longer extensions or have there been any longer extensions in the past?

Cram: there is the potential for the ZBA to allow more than six months per a condition of approval. During the application presentation at the public hearing, if the applicant said I do not think it is realistic that I can meet this time frame and I am requesting 2 years to get this done, that could be a condition of approval by the ZBA. With some of these more complicated variances, the applicants are running into trouble meeting that short timeframe.

Dolton: board discussions or concerns? Hearing none, I will entertain a motion for approval.

Dunn moved to approve the 6 month extension for variance request No. 911 with a second by Cowan.

Roll call vote: Yes-Cowan, Dloski, Dolton, Wahl, Dunn

Approved Unanimously

2. Discussion on motions and conditions of approval

Dolton: we had something of a controversy over the concrete crushing variance we approved.

Cram: I just want to emphasize the importance of us documenting the intent of approvals through motions and conditions of approval. If a motion is vague, it can be interpreted to mean many things. In the case of the concrete crushing variance, I believe the minutes reflected the

decision the ZBA made when you affirmed the zoning administrator's decision that concrete crushing is a heavy industrial use and not allowed in the A-1 zoning district. But under unique circumstances, because the previous zoning administrator did not make that determination and the fact there is an on-going violation and the community would like to see this property cleaned up, the ZBA authorized for a temporary concrete crushing activity to deal with the concrete on the property. The information the applicant presented was that it would not be beneficial to haul the concrete off to an appropriate location. They represented to you they needed to use this concrete on the site and by using the crushed concrete on site, it would eliminate truckloads of concrete leaving the property, getting crushed somewhere else, and then having to come back to the site as the intention was to use the concrete on the property. The motion read:

I move to affirm the zoning administrator's decision, but due to the unique circumstances associated with the demolition permit to allow the concrete crushing to commence as to the building that has already been demolished in light of the applicant's obtaining an EGLE permit and a county permit, and appropriate land use permit as well as the work being completed within 6 months. The applicant does have the right to apply for an extension if necessary with a second by Dunn.

Roll call vote: Yes-Dunn, Wahl, Serocki, Dloski, Dolton

Approved Unanimously

Cram: the actual crushing was to take 5-7 days. When the land use permit came in, I put a condition of approval that it be completed in 14 days, which I thought was reasonable based on what was represented to staff, the community, and the ZBA. The applicant believes they have 6 months to do this.

Dolton: I think what Jenn (Cram) is indicating is a situation where she has the ability to impose conditions on a land use permit and so she imposed conditions based on the minutes and her understanding of the discussion the board had and the representations that were made. The applicant argued any conditions needed to be part of the motion. The conditions imposed through the land use permit and the conditions the ZBA has imposed on the applicant may be different. There is a potential legal risk that could be litigated in a way that we really cannot anticipate.

Dunn: I remember them saying they could get it done within 5 days once the work actually started and they could not schedule a time because these large companies won't come up here to do a small job. I thought they had to start within 6 months and they had to get it done 5 days after the work commenced.

Cram: we can see how the motion as documented could have a different interpretation by the applicant and I completely respect the applicant's (Mr. Miller) interpretation. He is trying to get this property cleaned up. The other item noted in the minutes was the material was going to be used on site. The board chose not to put any conditions and that, material is now being crushed and he is proposing to sell it.

Dunn: he said he was going to use it on site.

Cram: that was not acknowledged and so in the future I will be working with legal counsel to draft proposed motions. I think we should have standard conditions of approval that go with every variance. One condition of approval would be to put into the record even if it is in the zoning ordinance to note you need to take action to get a land use permit within 6 months of approval. That puts it on the record you need to do this. There would be certain standard

conditions of approval and even though it might be redundant because it's noted in the zoning ordinance, the applicant does not always know to look in the zoning ordinance to know what the requirements are.

Dolton: this case even went beyond what would be standard conditions of approval. We did not circle back and have a discussion before the motion was made as to whether any of the discussion that was made among the board and representations made by the applicant needed to be articulated in conditions of approval.

Dloski: so the motion does not require them to use the concrete on site?

Dolton: no and that is on us. Cram raises a valid point that there is some risk if she simply interprets the minutes and imposes the conditions she thought were applicable. The ZBA is probably the better place to make those conditions within the motion.

Wahl: that was a unique situation because there was so much discussion in terms of what was going to happen.

Cram: this is a wonderful learning experience for us all. In the end the property is being cleaned up. As the zoning administrator, I do have the ability to put conditions of approval on the land use permit. You specifically said he had to obtain a land use permit, so that was a good thing in the motion. We have put in some guard rails to prevent this from becoming a full-blown commercial concrete operation. We are working with the applicant and the crushing is taking place and they are going through it quickly and I do not think it will take 6 months.

Dolton: there is a lesson for the board in that we feel certain representations are important to our approval and we need to include them. I would ask Cram to create a document regarding the standard conditions of approval for us to review and have a discussion.

Cram: yes, I will create that document for review. I have also been talking to legal counsel about changing the format of the findings of fact and actually having a formal finding of facts and resolution that is adopted after the ZBA makes an approval. This is good timing as Tori Westmoreland will be joining us in zoning and once she is up to speed, she will be your primary staff liaison. I will be here to support her and this board as the Director of Planning and Zoning.

8. **Approval of Minutes from the May 21, 2024, Meeting** Dloski moved to approve the minutes with a second by Cowan. **Approved by Consensus**

9. **Citizen Comments**

Nancy R. Heller 3091 Blue Water Road: (from the audience) I heard from a neighbor that they were pleasantly surprised at the concrete crushing operation. There has been no dust or noise.

10. **Board Comments** None

11. **Adjournment** Dloski moved to adjourn the meeting with a second by Dunn.

Approved by Consensus

Meeting adjourned at 7:22 p.m.